

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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X

LAURENCE BROWN and :  
CECILIA SHIM, :  
Plaintiffs,  
-against- : **ANSWER**  
17<sup>TH</sup> STREET ENTERTAINMENT II, : 08 CIV 7430 (Batts, J.)  
LLC, d/b/a 1 OAK, SCOTT SARTIANO :  
and RICHIE AKIVA, :  
Defendants. :  
X

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The Defendants, by their attorneys, Meltzer, Lippe, Goldstein & Breitstone, LLP, as and for their Answer to the Subject Complaint, set forth the following:

1. Defendants neither admit nor deny the allegations of Paragraph 1 of the Complaint, as they are not allegations of fact, but rather state legal conclusions.
2. Defendants neither admit nor deny the allegations of Paragraph 2 of the Complaint, as they are not allegations of fact, but rather state legal conclusions, and refer all conclusions of law to the Court.
3. Defendants neither admit nor deny the allegations of Paragraph 3 of the Complaint, as they are not allegations of fact, but rather state legal conclusions, and refer all conclusions of law to the Court.
4. Defendants deny knowledge or information and information as to form sufficient belief as to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint except admits Plaintiff Brown is a black female.
5. Defendants deny knowledge or information and information as to form sufficient belief as to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint except admits Plaintiff Shim is an Asian female.

6. Defendants deny the allegations of Paragraph 6 of the Complaint
7. Defendants admit the allegations of Paragraph 7 of the Complaint.
8. Defendants admit the allegations of Paragraph 8 of the Complaint.
9. Defendants deny the allegations of Paragraph 9 of the Complaint.
10. Defendants admit the allegations of Paragraphs 10 of the Complaint
11. Defendants deny the allegations of Paragraphs 11 of the Complaint
12. Defendants admit the allegations of Paragraph 12 of the Complaint.
13. Defendants admit the allegations of Paragraph 13 of the Complaint.
14. Defendants deny the allegations of Paragraph 14 of the Complaint.
15. Defendants deny the allegations of Paragraph 15 of the Complaint.
16. Defendants deny the allegations of Paragraph 16 of the Complaint.
17. Deny the allegations of Paragraph 17 of the Complaint, except to admit the

Plaintiffs were separated from their employment with the Plaintiff referred to as 1 Oak.

18. Defendants deny the allegations of Paragraph 18 of the Complaint.
19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Subject Complaint.
20. With respect to the allegations of Paragraph 20 of the Complaint, Defendants repeat and reallege all admissions and denials set forth in response to the paragraphs referenced therein as though set forth at length herein.
21. Defendants deny the allegations of Paragraph 21 of the Complaint.
22. Defendants deny the allegations of Paragraph 22 of the Complaint.
23. Defendants deny the allegations of Paragraph 23 of the Complaint.

24. With respect to the allegations of Paragraph 24 of the Complaint, Defendants repeat and reallege all admissions and denials set forth in response to the paragraphs referenced therein as though set forth at length herein.

25. Defendants deny the allegations of Paragraph 25 of the Complaint.

26. Defendants deny the allegations of Paragraph 26 of the Complaint.

27. Defendants deny the allegations of Paragraph 27 of the Complaint.

28. With respect to the allegations of Paragraph 28 of the Complaint, Defendants repeat and reallege all admissions and denials set forth in response to the paragraphs referenced therein as though set forth at length herein.

29. Defendants deny the allegations of Paragraph 29 of the Complaint.

30. Defendants deny the allegations of Paragraph 30 of the Complaint.

31. Defendants deny the allegations of Paragraph 31 of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

32. To the extent plaintiffs have failed to make a diligent and good faith effort to mitigate their purported damages, any relief awarded upon their claim in this action must be dismissed or reduced, in whole or in part.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

33. The complaint and all claims for relief stated therein should be dismissed because the defendants, at all times, acted reasonably and in good faith toward the plaintiffs without regard to their national origin, and did not engage in unlawful conduct or other wrongdoing.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

34. Even if it were shown that plaintiffs' race, color gender and ethnicity was the subject of any action(s), defendants would have taken the same action(s) with respect to the plaintiffs without regard thereto and, as such, this complaint should be dismissed for failure to state a claim upon which relief could be granted and/or any relief to each plaintiff should be limited or precluded.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

35. Plaintiffs' claims should be dismissed to the extent that they are barred by applicable statutes of limitations.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

36. The Court should not exercise subject matter, pendent or supplemental jurisdiction over plaintiffs' non-federal claims and, consequently, should dismiss plaintiffs' non-federal claims for lack of subject matter jurisdiction.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE**

37. Plaintiffs' federal discrimination claims should be dismissed to the extent that they were not asserted in any administrative charge filed by plaintiffs with the U.S. Equal Employment Opportunity Commission or otherwise do not satisfy statutory or jurisdictional prerequisites to suit and/or plaintiffs failed to fulfill all jurisdictional or other prerequisites to suit.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

38. To the extent the plaintiffs engaged in acts of misconduct prior to or during their employment which, if known, would have resulted in termination of the employment of any of the plaintiffs, any relief awarded should be reduced, in whole or in part, because of such misconduct.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

39. Since defendants Scott Sartiano and Richie Akiva were not plaintiffs' employer, all claims against said defendants should be dismissed.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

40. Plaintiffs' claim for punitive damages and attorneys' fees under the New York State Human Rights Law should be dismissed because that law does not provide for such Remedies.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

41. To the extent plaintiffs failed to satisfy or fulfill all jurisdictional or statutory prerequisites to suit, all claims under the New York Administrative Code or other laws should be dismissed.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

42. Plaintiffs have failed to exhaust administrative remedies.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

43. 42 USC §1981 is inapplicable to the case at bar.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

44. The Subject Complaint fails to state a claim for which relief may be granted.

**WHEREFORE**, the Defendants, 17<sup>TH</sup> Street Entertainment II, LLC, d/b/a 1 Oak, Scott Sartiano and Richie Akiva, respectfully requested that the Subject Complaint be dismissed in its entirety and that they be awarded such other and further relief as this Court deems just and proper.

Dated: Mineola, New York  
October 20, 2008

MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP

By \_\_\_\_\_ /s/  
Jonathan D. Farrell (JDF-7324)  
Richard M. Howard (RMH-2932)  
Attorneys for Defendants  
190 Willis Avenue  
Mineola, New York 11501  
(516) 747-0300

TO: D. Maimon Kirschenbaum, Esq.  
Joseph & Herzel, LLP  
Attorneys for Plaintiffs  
757 Third Avenue  
New York, NY 10017

NOTICE OF ENTRY

NOTICE OF ENTRY

*duly entered in the office of the clerk of the within  
named court on*

Dated,

*Yours, etc.*

MEITZER | IPPÉ GOLDSTEIN & BREITSTONE LLP

Office and Post Office Address

**190 WILLIS AVENUE  
MINEOLA, N.Y. 11501**

17TH STREET ENTERTAINMENT II,  
LLC, d/b/a 1 OAK, SCOTT SARTIANO  
and RICHIE AKIVA,

*in the within action; that affiant has read the foregoing  
the attorney(s) of record for*

*The unassigned, an attorney admitted to practice in the courts of New York State, hereby affirms as true under all the penalties of perjury that affiant is*

ATTORNEY'S AFFIRMATION  
STATE OF NEW YORK  
COUNTY OF

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and knows the contents thereof; that the same is true to affiant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that those matters affiant believes to be true. Affiant further says that the reason this affirmation is made by affiant and not by

ANSWER

*of which the within is a*

171

*one of the judges of the within named court, at*

on the  
at

*Dated,*

MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP

Attorney(s) for  
Office and Post Office Address

190 WILLIS AVENUE  
MINEOLA, N.Y. 11501

To  
*is hereby admitted*

*Attorney(s) for*

Index No. 08 CIV 7430 (Batts, J.)  
Year 2000  
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